IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION - FOR CONTEMPT No. 591 of 2006
In
SPECIAL CIVIL APPLICATION No. 5599 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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MOHAMMED SALIM MOHAMMED YUNUS SHAIKH - Applicant(s)
Versus
KAMUDCHANDRA KESHAVLAL PATEL & 3 - Opponent(s)

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Appearance :
MR MB GANDHI for Applicant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE
Date : 22/02/2006
ORAL ORDER

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This is an application under the Contempt of Courts Act, 1971 alleging that the order dated

16.2.2006 passed by respondent No.4 – Mr VC Barot, Judge, Small Causes Court, Ahmedabad amounts to contempt of Court and, therefore, contempt proceedings be initiated against the said learned Judge.

2. The petitioner herein is defendant No.3 in HRP Suit No. 453 of 1990 which is filed by respondent No.1 against the present petitioner and respondent Nos.2 and 3 herein. The suit is filed by respondent No.1 for possession of the suit premises on various grounds including sub-letting, non-user and alternative accommodation acquired by the tenant. It appears that the present petitioner filed Special Civil Application Nos. 5597 to 5599 of 2005 challenging interlocutory orders passed by the Small Causes Court in the abovesaid suit. A learned Single Judge of this Court passed the following order on 12.5.2005 :-

> “Rule returnable on 6.7.2005.
> In the meantime, proceedings before the trial Court are stayed.”

3. When the suit was listed for hearing before the learned trial Court, the learned trial Judge called upon the parties to proceed with the suit. At that time, the defendants submitted a purshis that the suit proceedings are stayed by the High Court. It also appears that the defendants produced a computer copy of the status report regarding pendency

of the petition. By his order dated 16.2.2006 below the said purshis Exh. 291 all that the learned trial Judge has done is to require the defendants to file an affidavit and produce authentic order of the High Court continuing the stay. It is specifically stated that in the interest of justice, the matter is kept on 23.2.2006 to enable the defendants to produce affidavit or documentary evidence and that if the defendants will not produce affidavit clearly mentioning that HRP Suit No. 453 of 1990 is stayed or will not produce the order of the High Court, the trial Court will proceed further on 23.2.2006.

4. Having heard Mr Gandhi, learned counsel for the petitioner, the Court is unable to find that the learned trial Judge has committed any contempt of this Court. The first and the only order of this Court on Special Civil Application Nos. 5597 to 5599 of 2005 was -

> "Rule returnable on 6.7.2005.
> In the meantime, proceedings before the trial Court are stayed."
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> (emphasis supplied)

In view of the phraseology of the said order, the interpretation which appears to have been placed by the learned trial Judge on the order is that since the returnable date was 6.7.2005, the stay was to continue till 6.7.2005. It cannot be said that the interpretation placed by the learned trial

Judge is perverse or that such interpretation would amount to contempt of this Court.

5. At this stage, we also cannot help referring to Circular No. D.2917/2002 dated 17.5.2002 that the High Court on the administrative side issued to instruct the subordinate Courts to give top priority to old cases. The said Circular defines “old cases” as cases instituted in the concerned Court till the year 1990 (i.e. upto 31.12.1990). HRP Suit No. 453 of 1990 would, therefore, obviously fall within the scope of the said Circular dated 17.5.2002. The preamble of the circular states that it has been noticed by the Hon'ble the Chief Justice and Judges of this Court that delay in disposal of cases has been inviting adverse public opinion for quite sometime and, therefore, the High Court has issued instructions contained in the said circular, which are required to be carried out by all the Judicial Officers in the State scrupulously. It is also mentioned in paras 8 and 10 of the said Circular that if disposal of old cases assigned to a concerned Court is not found to be satisfactory by the District Judge and the explanation for such performance is not found to be satisfactory, an adverse entry shall be made in the confidential report of the concerned Judge presiding over that Court. Since one of the grounds for pendency of old cases in trial Courts is stay granted by higher Courts, para 4.1 of the said circular specifically provides that if the proceedings of any case are stayed by the High Court,

a statement with the details of such cases and case numbers in the High Court shall be submitted by the District Judge to the High Court. Para 4.2 provides that if the District Court has granted interim stay of proceedings of old cases, such appeals/revisions shall be notified for immediate hearing.

It is further stated in para 4.5 of the said Circular that an officer shall be designated to look after the compliance with the instructions. Para 9.3 of the Circular provides for periodical revision of definition of “old cases” for different Districts.

6. The object underlying the instructions contained in the said Circular is very clear: all the Courts must endeavour to see that the old cases i.e. the old cases filed till the year 1990 do not remain pending before the subordinate Courts and that when the attention of the High Court is invited to such stay orders granted by the High Court against trial of old suits, the proceedings pending before the High Court can be notified for early hearing and such proceedings may be disposed of by the High Court at the earliest so that the trial Court can proceed with hearing and deciding the old suits.

7. In view of the above instructions contained in Circular No.D.2917/2002 dated 17.5.2002 issued by the High Court on administrative side and looking to the language employed in the stay order dated

12.5.2005, if the learned trial Judge required the defendants to produce authentic stay order indicating that the stay of old suit of 1990 still continues in February, 2006, when the returnable date in the petition was 6.7.2005 and the stay of trial Court proceedings was granted in the meantime, it can never be said that the order dated 16.2.2006 passed by the learned trial Judge amounts to contempt of Court. On the contrary, the learned trial Judge should be complimented for being alive to the need to see that old cases are tried and decided at the earliest.

8. This application is, therefore, dismissed with a clarification that this order shall not come in the way of the petitioner moving the learned Single Judge hearing Special Civil Application Nos. 5597 to 5599 of 2005. It is also clarified that we have not even inquired, much less gone, into the merits of the controversy which is the subject matter of Special Civil Application Nos. 5597 to 5599 of 2005.

9. The Registry is directed to place a copy of this order on the file of Special Civil Application Nos. 5597 to 5599 of 2005 also.

10. A copy of this order shall also be circulated to all the Trial Courts and the District Courts in the State.

[M.S. SHAH, J.]

[SHARAD D. DAVE, J.]

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